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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,441	03/23/2004	Henri Hansson	1506-1004-3	1795

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EXAMINER

WEDDINGTON, KEVIN E

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,441

Applicant(s)

HANSSON ET AL.

Examiner

Kevin E. Weddington

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12-15-04</u> . | 6) <input type="checkbox"/> Other: _____ |

The finality of the Office action dated May 20, 2005 is hereby withdrawn so that a new rejection can be made.

Claims 1 and 3-10 are presented for examination.

Applicants' amendment filed September 20, 2005 and the notice of appeal filed November 21, 2005 have been received and entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilbert et al. (5,776,887) or Carpenter et al. (4,262,031) in view of Christianson et al., "Correlation of Microscopic Structure of Corn Starch Granules with Rheological

Properties of Cooked Pastes”, Food Microstructure, Vol. 1, pp. 13-24, (1982) and Meyer, Recent Development In Starch Chemistry, Vol. 1, pp. 143-182, section III (1942) and further in view of Wolfe, Carbohydrate Metabolism and Blood Sugar Monitoring, pages 1-4.

Wilbert et al. teach a raw cornstarch composition comprising in the abstract and in columns 1-3 that described the composition to maintain blood glucose at a normal level via controlled release of glucose. The slowly absorbed carbohydrate fraction of the invention is raw cornstarch as cited in column 3, lines 19-20, which is also reasonably native cornstarch as instantly claimed in claim 1. Column 1, lines 15 and 16, disclose percentages for such cornstarch content that are inclusive of the instant range in claim 6. Other components as in claims 1 and 6 are low-calorie sweetener and organic acid, which are also components of the cited reference set forth in columns 2-5. Note column 4, lines 17-26, discloses amino acids, reasonably organic acids and column 5, lines 19-21 suggests and motivates artificial flavorants. Carpenter et al. teach a pudding composition mix therein disclose preferably options of raw cornstarch and saccharin sweetener in column 2, lines 19-68, along with an acidulant described in column 3, lines 13-50 which is the organic acid required in claim 1. The percentage of starch (preferably cornstarch) at the top of column 3 covers the ranges in claim 6 and claim 1 which broadly utilizes any “desired” granulation of cornstarch. Also the two primary references teach the granule nature of native or raw cornstarch.

The instant invention differs from the cited reference in that the cited reference does not teach the “desired enzymatic degradation rate of starch” as set forth in claim 1. However, the secondary references, Christianson et al. and Meyer, teach on page 5, left-hand column, lines 6-8 of Christianson and pages 166-170, section III of Meyer, teach support that granule structure of raw or native cornstarch are the same.

The instant invention differs from the cited references in that the cited references do not teach the controlled linear glucose release timeframe of claim 9 and 10. However, the tertiary reference, Wolfe, teaches raw cornstarch is cited as first introduced in the 1980s as a therapy for glycogen storage diseases in that it takes 6-8 hours to fully breakdown when given at bedtime.

Claims 1 and 3-10 are not allowed.

The remaining references listed on the enclosed PTO-892 are cited to show the state of the art.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin E. Weddington whose telephone number is (571)272-0587. The examiner can normally be reached on 11:00 am-7:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Christopher Low can be reached on (571)272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kevin E. Weddington
Primary Examiner
Art Unit 1614

K. Weddington
February 22, 2006